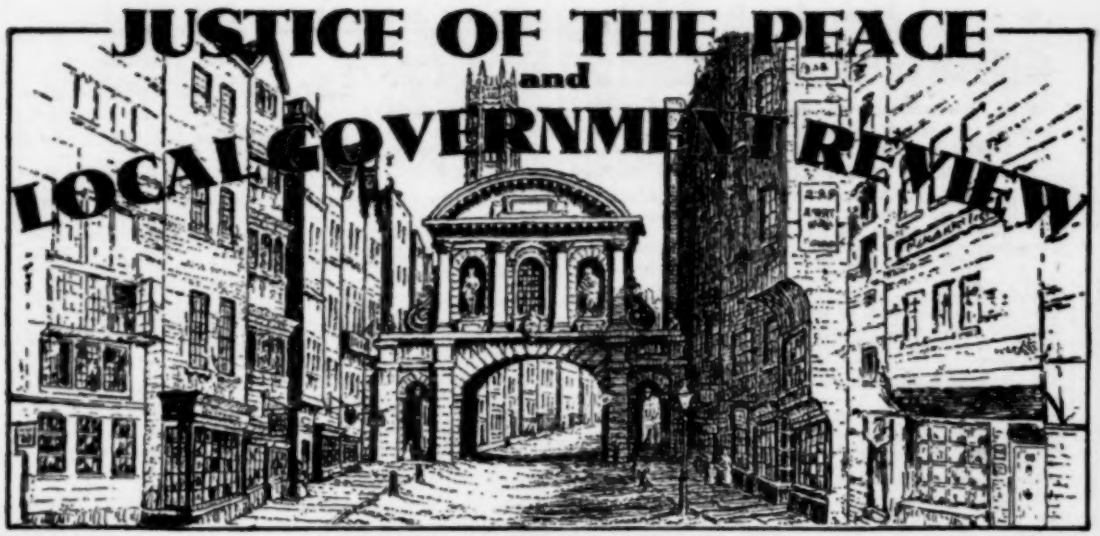

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Clerk of the County Council.

The Courts,
Carlisle.

BOROUGH OF STAFFORD

Deputy Town Clerk

APPLICATIONS are invited for the above appointment from Solicitors with Local Government experience at a salary within the scale A.P.T. IX (£750×£50 to £900 a year). The amendments to the salary scales approved by the National Joint Council are under consideration.

A house owned by the Council is available to rent.

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T. BROUGHTON NOWELL,
Town Clerk.

Borough Hall,
Stafford.

URBAN DISTRICT OF SOLIHULL

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APPLICATIONS are invited for the position of Assistant Solicitor in my Office. The salary will be within the range (Grades Va to VII) provided by the National Joint Council according to qualifications and experience. The National Joint Council conditions will apply.

Preference will be given to applicants who have had previous service in a local government office and who have had experience in conveyancing and advocacy. Some administrative work will be involved in the appointment.

Applications, giving particulars of age, education, present and past appointments (with salaries and dates), and experience, together with the names of two referees, should be forwarded to the undersigned, endorsed "Assistant Solicitor" to arrive not later than June 4, 1951.

W. MAURICE MELL,
Clerk of the Council.

Council House,
Solihull.
May 12, 1951.

CITY OF LIVERPOOL

Town Clerk's Department

APPLICATIONS are invited for the appointment of Assistant Prosecuting Solicitor. Salary: £1,000 × £50—£1,250 per annum.

Application forms, returnable by June 16, 1951, together with details of duties and conditions of appointment, may be obtained from the undersigned.

The appointment is superannuable and subject to the Standing Orders of the City Council. Canvassing disqualifies.

THOMAS ALKER,
Town Clerk.

Municipal Buildings,
Liverpool, 2.
May, 1951. (JA. L603).

COUNTY OF MIDDLESEX

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Canvassing disqualifies.

C. W. RADCLIFFE,
Clerk to the Standing Joint Committee.

Guildhall,
Westminster, S.W.1.

CITY OF BRADFORD

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APPLICATIONS are invited for the above appointment.

Applicants must be not less than 23 years nor more than 40 years of age (except in the case of a whole-time serving officer.

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FRANK OWENS,
Secretary to the Probation Committee.

Magistrates' Clerk's Office,
Town Hall, Bradford.

BOROUGH OF DAGENHAM

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APPLICATIONS are invited from newly admitted solicitors (or from Solicitors awaiting admission) for the appointment of Second Assistant Solicitor in the Town Clerk's department. Salary Grade V (a), *viz*: £600—£660 per annum plus London weighting. (Age 21 to 25—£20 p.a.; age 26 and over £30 p.a.)

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Canvassing disqualifies.

The Council are unable to offer housing accommodation.

KEITH LAUDER,
Town Clerk.

Civic Centre,
Dagenham.

COUNTY BOROUGH OF STOCKPORT

Assistant Solicitor

APPLICATIONS are invited for the appointment of an Assistant Solicitor at a salary in accordance with the National Joint Council's Scale as under:

(a) After admission and on first appointment within A.P.T. Division, Grade Va (£600—£660 per annum).
(b) After two years' legal experience from date of admission within A.P.T. Division, Grade VII (£685—£760 per annum).

Forms of application and conditions of appointment may be obtained from the undersigned. Local Government experience is desirable but not essential.

Applications on the official form, with copies of two recent testimonials, must be received by me not later than June 16, 1951.

Canvassing will be a disqualification.

J. HAYDON W. GLEN,
Town Clerk.

Town Hall,
Stockport.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

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NOTES of the WEEK

Husband and Wife : Effect of agreement not to take proceedings

At one time there was some reason to think that where husband and wife had separated by deed, and the wife had agreed not to take proceedings so long as the husband paid a stipulated amount of maintenance, the wife was barred from taking proceedings on the ground of wilful neglect to maintain, even if circumstances changed and she found her allowance inadequate.

However, it was made clear in *Matthews* v. *Matthews* [1932] P. 103, that a deed does not bar the jurisdiction of magistrates. The deed must be looked at as evidence to see how far it has made the necessary provision for the wife. If adequate provision has not been made, or if the agreed payments are not being made the justices can entertain an application. Nevertheless, if the wife has agreed to accept a certain sum, which has been paid regularly, she will have great difficulty in obtaining a larger sum, and the deed is of high evidential value, *Morton* v. *Morton* [1942] 1 All E.R. 273.

These principles seemed to be shaken by the decision of the learned judge in *Tulip* v. *Tulip*, a decision reversed on appeal (*The Times*, May 11), by a majority. The wife had applied for maintenance, under s. 23 of the Matrimonial Causes Act, 1950. In 1932 the parties entered into a deed of separation, the husband covenanting to pay his wife £3 a week net. Payment was made regularly. In December, 1949, the wife asked for an increased allowance, which the husband refused. The wife then proceeded under s. 23, *supra*, alleging wilful neglect to provide reasonable maintenance. Her case was that her husband's means had increased, her own health was impaired, and the value of money had fallen since 1932. The learned judge dismissed her application, and observed that if he did otherwise such deeds would become valueless.

In the Court of Appeal, Lord Asquith and Birkett, L. J. (Harman, J., dissenting), held that the wife was not estopped by the deed. The real question was whether the husband at the time when the application was made, was providing reasonable maintenance for the wife. The wife's application was not a breach of her covenant to meet her own liabilities, the appeal would be allowed, and there would be a new hearing on the issue whether in fact the husband was providing reasonable maintenance.

Leave to appeal to the House of Lords was granted, so it may be that the matter is not yet settled. For the present, justices may entertain applications on the ground of neglect to maintain even when payments under a deed are made regularly, but it may be suggested, that only where there has been a marked change of circumstances are they justified in finding wilful neglect to maintain, if a sum agreed by the parties as reasonable is being paid.

Desertion and Insanity

In *Crowther* v. *Crowther* (*The Times*, May 10), the House of Lords examined exhaustively the authorities on the subject of desertion by a person of unsound mind.

The wife's petition on the ground of desertion had been dismissed, and her appeal was dismissed by the Court of Appeal. The husband had denied desertion and alleged as an alternative defence, that his desertion if any, had been terminated when he was admitted to a mental hospital as a person of unsound mind, under a reception order. The learned judge held that the husband was incapable of having an *animus deserendi* during the period when the reception order was in force and therefore the wife could not establish that he had deserted her for three years immediately preceding the presentation of the petition. The Court of Appeal agreed.

Lord Porter, having reviewed the authorities, said that there was no reason for imputing an irrebuttable inability on the part of a husband who had been the subject of certification. Persons abnormal in some respects might be normal in others, and evidence alone could solve the question in which category the individual was to be placed. If a petitioner was unsuccessful in proving that the lunatic was capable of forming an intention, or if no evidence was called, the Court was not entitled to draw an inference of continued desertion from the intention shown in the pre and post certification periods. The appeal should be allowed and the case sent back in order that evidence, if offered, might be received and a conclusion reached in conformity with those principles.

So far as the parties to this particular case are concerned, the issue remains not yet determined. Its importance to all courts, as a decision of the highest tribunal, however, is great. Justices have to deal with many difficult points of law, including sometimes the effect of insanity as a possible answer to an alleged matrimonial offence. This latest decision gives them further guidance.

A Question of Duplicity

One of those technical points which might possibly be taken against a conviction, and even result in its being quashed, although it has little or nothing to do with the merits, has been brought to our notice by a learned correspondent.

The facts were simple enough : at petty sessions a husband and wife were convicted of " ill treatment " to and neglect of their child, and sentenced, only one sentence being imposed against each defendant for both offences. There was a single information and summons alleging both ill-treatment and

neglect as authorized by s. 14 of the Children and Young Persons Act, 1933. The conviction as drawn up followed the wording of the information and summons showing the conviction of each defendant of an offence that they " . . . wilfully did ill-treat and neglect the said child . . . " The husband alone appealed against his conviction and sentence. The grounds of appeal against conviction were that the conviction was bad for duplicity and contrary to the evidence. On the hearing of the appeal it appeared that the justices in petty sessions had simply found the husband and wife guilty. Counsel for the appellant took the point that in spite of the provisions of s. 14 of the Children and Young Persons Act, 1933, the offences of " ill-treatment " and neglect remained separate ; and that therefore the justices in petty sessions ought specifically to have stated that they found the appellant (and the wife) guilty of either, both or neither of the offences. The court agreed.

Upon hearing the evidence the court upheld the appeal on the ill-treatment charge, and the conviction was affirmed on the neglect charge. On the appeal against sentence the appellant's sentence was reduced from six months' imprisonment to conditional discharge. The court, having decided the appeal upon the evidence before it, did not give a decision as to whether the conviction should be quashed or not on the technical question of duplicity.

As s. 14 refers to informations and summonses, but not to convictions, the question of the form of the conviction is a matter upon which there may be difference of opinion. Subsection (2) refers to separate offences being included in a single information or summons, adding that where they are so included, there shall not be separate penalties. It seems, therefore, that if separate informations are laid there can be separate penalties, assuming that the facts justify this. It is quite arguable, therefore, that a single conviction for more than one offence would be justifiable. Nevertheless, it would probably be preferable to convict of one only, and thus avoid the possibility that the conviction and sentence might be quashed on a highly technical ground.

Perhaps when the promised overhaul of summary procedure takes place questions of this kind may be cleared up.

Unsworn Evidence of Child

The case of *Credland* v. *Knowler*, *see* p. 279 *ante*, upon the question of corroboration of the unsworn testimony of a child of tender years, referred to s. 38 of the Children and Young Persons Act, 1933. It will be remembered that there was a similar provision in s. 30 of the Children Act, 1908, as extended by the Criminal Justice Administration Act, 1914.

Unsworn evidence of a child had been admitted much earlier. The Criminal Law Amendment Act, 1885, provided for the admission of such evidence upon certain charges of sexual offences, there being a requirement of corroboration. More than 100 years earlier, Theodore Barlow in his *Treatise on the Justice of the Peace* published in 1745, when writing of rape, said : " If the party injured be a child under twelve years old, it is Lord Hale's opinion, she may be sworn if it appears that she has that sense and understanding that she knows and considers the obligation of an oath (if this may be done upon the trial *a fortiori* upon the accusation before the justice of the peace). But if she be too young to be sworn, he thinks she may be heard without oath, but there must be the concurrence of other proofs : and the complaint immediately made by such child to her friends, shall be by them delivered up as the narrative of the child. Yet in case of an offence which is frequently secret in the commission, this is a kind of evidence ; therefore by the like reason may the child be heard without oath : and in the one case and the other there ought to be concurrent evidence ; and the jury ever is at liberty to believe or disbelieve the witnesses."

The Play's the Thing

Some years ago, a pleasant feature of the annual conference of the National Association of Probation Officers was the representation in dramatic form of a juvenile court as it often was, followed by that of a juvenile court as it ought to be. The plays were the work of a probation officer, who reproduced successfully the atmosphere and attitude of the two extremes, and the cast, who entered into the spirit of the production wholeheartedly, gave an impression of reality to the performance. The object lesson was so well delivered that many of the audience wished it could have been given many times and in many places.

We were reminded of this on learning that the Merseyside Civic Society recently presented a play called " Waverley Magistrates' Court " which attracted a thousand people at each performance. From a programme sent to us it appears that the scheme of the play was to show a typical sitting of a court of summary jurisdiction, with a miscellaneous list of cases, ten criminal and one civil, with advocates appearing in some. As the author and producer was Mr. Henry Harris, deputy clerk to the Liverpool justices, we can be sure that it would be a faithful and accurate picture of the proceedings of such a court.

The idea of informing interested members of the general public of what is done in the magistrates' courts, and how it is done, is capable of development on various lines, and this is one that may make its appeal to many who do not trouble to read serious contributions to the literature on the subject. The public is interested in what goes on in the courts, but has to rely largely on newspaper reports, which, however carefully and accurately presented, are necessarily brief, and which naturally deal with only a very small proportion of cases tried. The press has to make a selection of cases which, because they are unusual in some way, or concern interesting people, or offer some amusement, are likely to appeal to the ordinary reader. Seeing a list of cases dealt with, with police, witnesses, parties and advocates, gives a true and vivid impression, instead of the vague and often erroneous idea of the work of magistrates which exists in the minds of many people.

Sewers for Housing Estates

At p. 286, *ante*, we had to deal with a Practical Point about the sewerage of a local authority's housing estate, in its own district, and advised that the necessary sewer would be a " public sewer," which could be laid across an adjoining owner's land by virtue of s. 15 of the Public Health Act, 1936. At p. 331 in this issue a learned correspondent, the deputy clerk to the rural district council of Chichester, doubts our advice, basing his doubts upon s. 17 of the Act, with the proviso to s. 20 (2). There is some awkwardness in the relation between ss. 14, 15, 17, and 20, and we do not think any completely satisfying explanation of them can be given. Section 20 (1) (*b*) speaks of " a local authority " without exceptions, and, if it stood alone, a borough council which laid a sewer for houses it owned in a rural district would saddle the rural district council with maintenance of the sewer. Hence the proviso to subs. (2). The manifest intention, and we think the effect, is that in such a case it is only the rural district council who can " declare " under this proviso. But the proviso does not say that their " declaring " is to be after the sewer is laid. Where s. 17 (1) is used, nothing can be done until the sewer is there, and it must be a sewer which someone else has laid, because the section, which says nothing about declaring a sewer to be a public sewer, says the local authority are to declare it to be vested in themselves, a process which presupposes that it is not already vested in them : hence the proviso to s. 17 (1).

Section 20 (1) (*d*) gives effect to the vesting declaration made under s. 17, and s. 20 (1) (*a*) (*b*) (*c*) vests some other properties—as regards (*b*), apparently superfluously. Then s. 20 (2) comes along and says that, subject to the proviso, the vested sewers are to be public sewers. The process of *declaring a sewer to be a public sewer* (italics ours) occurs for the first time in the proviso to s. 20 (2) and we see nothing to prevent the council's doing it in advance of laying the sewer, where the sewer is to be laid by themselves, *i.e.*, where the procedure of the proviso to s. 17 (1) can in the nature of things not be applied.

Committee Membership

We have sometimes spoken of the right of a local authority to change the membership of a committee, before expiry of the term for which the committee was appointed. There was, for example, a suggestion which we declined to endorse at 112 J.P.N. 329, that the chairman of a committee held office as of right for a year ; at 98 J.P.N. 421, in the last column of an article begun at p. 405, we stated that a council can in principle remove from a committee a member who has lost their confidence ; at 113 J.P.N. 561 we spoke of the councillor who is a convicted felon, but not disqualified in law for continued membership. This last is *rara avis* ; much more common are the councillor who has turned crotchety with age, or has developed the characteristics of a sea lawyer, and cannot get on with his colleagues; the councillor, typically though not necessarily raw and inexperienced, who is continually imputing discreditable motives, and the councillor found frequently disclosing confidential business—who may be of any age and standing, for nobody is too young or too old to succumb to vanity. Although it is obviously undesirable as a normal practice to remove a member from a committee before the end of his current period thereon, and indeed doing so except for serious cause would be destructive of the usefulness of the committee system, the power must be in the background—as must be the right of the council in the first place to choose members to serve on its committees : 108 J.P.N. 323. In *Manton* v. *Brighton Corporation* (*The Times*, May 3, 1951), Slade, J., proceeded on our view of the law, and the facts afford an illustration, additional to those we have given in this note, of the sort of occasion where the power of removal from committees may be properly exercised. Alderman Manton, it appeared, had come under suspicion of some impropriety, the exact nature of which is not clear from the newspaper report, in relation to the allocation of housing accommodation. After inquiry, a special committee set up to investigate the matter recommended that the alderman should no longer serve on any committees of the council, and the council thereupon removed him from all the three committees of which he was a member. Taking the view that he was entitled to continue as a member until his term of office on each committee ran out in May, 1951, the alderman sought a declaration in the High Court to that effect, and an injunction to restrain the council from excluding him from those committees. In this he failed. The learned judge carefully refrained from expressing an opinion upon the alleged impropriety into which the council's special committee had examined : he was dealing only with the council's power, as a matter of law, and upon this he reached the same conclusion as we have reached ourselves—that, unless there be in some particular case an exception made by statute, the council's control over the personnel of committees is complete.

PROCEDURE UNDER SECTION 28: CRIMINAL JUSTICE ACT, 1948

A practical point of some importance is often brought to light during the trial of a case to which s. 28 of the Criminal Justice Act, 1948, applies (*i.e.*, an offence which is punishable either on summary conviction or on conviction on indictment), and in particular, such an offence as driving a motor vehicle under the influence of drink to such an extent as to be incapable of having proper control of the vehicle.

In such a case the prosecution normally applies to the court for summary trial and normally the court agrees to that course. It is then the duty of the court to comply with subss. (3) and (4) by causing the charge to be read to the accused and (in the case in point) informing him of his right to be tried by a jury. The accused may assert his right to trial by jury, and the court will then proceed to take depositions.

It is important at this point to note that the hearing of the case as if the offence were punishable on conviction on indictment is not by virtue of s. 28 (1), but of s. 17, Summary Jurisdiction Act, 1879. Section 28 (2) provides that where the court begins to hear a case, in accordance with subs. (1), as if the offence were punishable on indictment, the prosecutor or the accused may subsequently ask for summary trial and if the court agrees, the case may be tried summarily. So, where the *prosecution* does not ask (under s. 28 (1)), for a case of " drunk in charge " to be tried summarily, but wishes it to go for trial, the procedure may at a later stage be changed and the case may be tried summarily by virtue of s. 28 (2), subject to the defendant not claiming his rights under s. 17 of the Act of 1879.

Difficulty is encountered where, in such a charge, the prosecution asks for the case to be tried summarily and the defence elects to go for trial under s. 17, and subsequently changes its mind and asks for summary trial. Can this be permitted ?

In answering this question it helps if first of all a red herring is disposed of. That intrusive fish is s. 28, which really has nothing to do with the question, and only intrudes because it happens to apply to some of the offences to which s. 17 of the Summary Jurisdiction Act, 1879, applies and because it causes the question to be raised. The problem essentially is whether a person who has claimed under s. 17 to be tried by a jury may subsequently be permitted to ask for summary trial.

It is therefore necessary to examine s. 17 closely. It states, *inter alia*, that " before he pleads to the charge but not afterwards," the defendant may " claim to be tried by a jury." It is therefore abundantly clear that if he does not make that claim at the outset he is debarred from making it after he has pleaded.

Having, however, made the claim is he bound by his choice ?

It would appear on the whole that he is, because after the words last quoted above, s. 17 proceeds " and thereupon the court of summary jurisdiction shall deal with the case in all respects as if the accused were charged with an indictable offence and not with an offence punishable on summary conviction." A court of summary jurisdiction has no jurisdiction to try an offence which is not punishable on summary conviction and it seems clear that the effect of these words is to oust the jurisdiction of the court. Thereafter, it has no power to try the case summarily and if the defendant changes his mind and asks for summary trial the court has no power to grant the request. Inconvenient as this conclusion may often prove it appears to be inescapable.

CONSTRUCTION AND USE REGULATIONS

By J. L. THOMAS

There was decided in the King's Bench Division on April 26, 1950, the case of *Simmonds* v. *Fowler* (1950) 48 L.G.R. p. 623 which, the writer submits, is of considerable importance to those concerned with road traffic prosecutions, particularly the police and justices' clerks.

The facts of the case were, briefly, as follows : a man named Fowler was using a motor lorry on a road in Nuneaton when the vehicle was stopped by a police constable and then examined by a Ministry of Transport vehicle examiner, who found it to be defective in that the body front corner pillar was broken, the driver's door was insecure on its hinges, and the steering mechanism required attention. The examiner handed the driver a form prohibiting the use of the vehicle, which form specified the defects. Informations were laid against the driver and owners for contraventions of reg. 67 (1), Motor Vehicles (Construction and Use) Regulations, 1947, and when the case came before the justices their clerk pointed out that the informations did not contain particulars of the parts and accessories of the vehicle alleged to be defective. He asked the prosecutor whether he wished to have the information amended so as to specify the particular parts and accessories, but the prosecutor declined, contending that the form issued by the vehicle examiner constituted sufficient notice of those parts and accessories. The justices dismissed the information.

The prosecutor appealed, but was unsuccessful, and Lord Goddard, C.J., in the course of his judgment, made it clear that in respect of an offence of this nature it is necessary " to set out in what respects it is said that the vehicle does not comply with the regulation." Hence, it will no longer be sufficient to rely solely on the formula used for so long in describing the vehicle, namely : ". . . the parts and accessories of which were not in such condition that no danger was likely to be caused," etc.

The above ruling is unequivocal, but Lord Goddard's judgment contained something further which conflicts with a procedure long followed by many (possibly all) police forces and justices' clerks, for the concluding words of the judgment state : " There was, however, the more formidable objection, in my opinion, that the statement of the offence in this case does not disclose any offence at all." Lord Goddard quoted from s. 32 of the Criminal Justice Act, 1925, which includes the words : " and, if the offence charged is one created by statute (it) shall contain a reference to the section of the statute creating the offence," and then went on to say : " It is clear what the prosecution desired to allege against the defendants was that one of them used a motor vehicle which was not in the condition prescribed by certain regulations and that the others permitted the use of such a vehicle. The section which creates that offence is s. 3 (1) of the Road Traffic Act, 1930, which provides : ' Subject as hereinafter provided, it shall not be lawful to use on any road a motor vehicle or trailer which does not comply with the regulations applicable to the class or descriptions of vehicles to which the vehicle belongs, as to the construction, weight and equipment thereof.' By s. 3 (3) ' If a motor vehicle or trailer is used on a road in contravention of this section, any person who so uses the vehicle or causes or permits the vehicle to be so used shall be guilty of an offence.' By s. 30 of the Act the Minister is given power to make regulations in regard to the construction, equipment, etc., of motor vehicles. Therefore it is quite clear that if a motor vehicle is found to be not in accordance with the regulations issued under s. 30, the offence committed is using the vehicle contrary to s. 3 of the Act, though I am not saying that that is necessarily a proper statement of the offence ; it may be more elaborate than that."

Hitherto, it has been customary to describe a contravention of a regulation in Part II of these regulations as being contrary to the particular regulation (by inserting its number) and s. 3 of the Road Traffic Act, 1930, but to show a contravention of a regulation contained in Part III as being contrary to that regulation and reg. 94, which states : " If any person uses or causes or permits to be used on any road a motor vehicle or trailer in contravention of or fails to comply with any regulation contained in Part III of these Regulations he shall for each offence be liable to a fine not exceeding twenty pounds."

It may seem presumptuous for the writer (a humble police officer) to raise the point, but he cannot help wondering whether the attention of the Divisional Court was drawn to reg. 94, since a strong case can be made out in favour of the old practice. Section 3 of the Road Traffic Act, 1930, states that it will be unlawful to use a motor vehicle " which does not comply with the regulations applicable to the class or description of vehicles to which the vehicle belongs as to the construction, weight and equipment thereof," and Part II of the regulations is headed : " Regulations governing the construction, weight and equipment of motor vehicles and trailers." From this similarity in wording, it is clear that a contravention of any regulation contained in Part II constitutes an offence against s. 3 of the Act.

On the other hand, Part III of the regulations is headed : " Regulations governing the use of motor vehicles and trailers," and therefore does not appear to link up with s. 3 of the Act. Furthermore, as already explained, reg. 94 provides a penalty in respect of contraventions of regulations contained in Part III, and both s. 3 and reg. 94 refer to offenders who use, cause or permit the use of, a defective vehicle. Why, therefore, it may be asked, was reg. 94 made if s. 3 of the Act did relate to contraventions of the regulations in Part III ?

Some guidance may be obtained from *Oke's Magisterial Formulist*. The twelfth edition of the work, published in 1940, did not furnish particulars of offences arising from contraventions of the Construction and Use Regulations, but merely a " statement of offence " under two separate headings, namely : " Breach of Motor Vehicles (Construction and Use) Regulations, 1937, as to construction, weight and equipment," and " Breach of Motor Vehicles (Construction and Use) Regulations, 1937, governing use of motor vehicles and trailers." Under the former heading, an offence was shown as being " contrary to Motor Vehicles (Construction and Use) Regulations, 1937," and under the second as " contrary to Part III of the Motor Vehicles (Construction and Use) Regulations, 1937."

As already shown, a contravention of a regulation contained in Part II ought to be described as being " contrary to s. 3 of the Road Traffic Act, 1930," although it would probably be wise to specify, also, the particular regulation contravened. With regard to the second heading above, merely to refer to " Part III . . . " seems scarcely definite enough. These matters were largely rectified in the thirteenth edition of *Oke*, published in 1947, which contained the following note : " Contravention of Part II of the Regulations (6-53) is an offence against s. 3 of the Road Traffic Act, 1930." The obvious implication is that offences

against Part III are *not* contrary to s. 3 of the Act. This later edition of *Oke* contains particulars of contraventions of several regulations contained in Part III, and in each the offence is shown as being contrary to the particular regulation only, no mention being made of s. 3 of the Act. Other books favour the addition of reg. 94, that is, describing an offence as being, for example, " contrary to regs. 55 and 94," under the belief that the latter creates the offence.

THE NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

By GRAEME FINLAY, *Barrister-at-Law*

The National Parks and Access to the Countryside Act, 1949, gave statutory effect to the Report of the National Parks Committee (England and Wales) (Comd. 7121) presided over by Sir Arthur Hobhouse, Chairman of the Somerset County Council. The composition of this Committee included (*inter alia*) two architects and a biologist as well as other representative interests. The history of National Parks started in the U.S.A., in 1872, when Yellowstone Park was reserved " as a pleasuring ground for the benefit and enjoyment of the people." After that date National Parks were set aside in all parts of the world including Canada, Argentina, the Union of Africa, Kenya, the Belgian Congo, Australia and New Zealand, together with many countries on the Continent of Europe. For obvious reasons of topography, climate, vegetation and so on, the character of the different National Parks is very varied. The North American Parks, for instance, were reserved primarily in order to protect wild life, whilst in the Argentine first place was given to the preservation of flora and fauna. On the other hand the promotion of scientific research and the preservation of interesting geological features were amongst the principal objects of an important National Park in Italy, and in the North American Parks the provision of facilities for popular recreation and enjoyment was another outstanding feature. Such facilities for holiday makers included hotels, cabin camps and camping sites whilst fishing, hunting, canoeing or riding expeditions were enabled by the help of the park authorities, thereby opening a far wider vista of outdoor enjoyment to the public as a whole.

In England the movement for National Parks was largely pioneered by various voluntary bodies interested in the countryside. The pioneer statutory effort goes to the credit of Lord Bryce, who presented his Bill in 1884 to enable access to mountains in Scotland. Shortly, his Bill proposed "that no owner or occupier of uncultivated mountain and moorlands in Scotland shall be entitled to exclude any person from walking and being on such land for the purposes of recreation or scientific or artistic study or to molest him in so walking and being." The first Government White Paper (Comd. No. 3851) on National Parks was the work of the Addison Committee and was published in 1931.

Thereafter continued pressure by these bodies, including notably the Councils for the Preservation of Rural England and of Rural Wales, resulted in the Scott Committee on Land Utilisation in Rural Areas, recommending in their Report (Comd. 6378) that National Parks should be established for the nation and in 1945 the Dower Report (Comd. 6628) dealt comprehensively with all the aspects of National Park policy and so enabled the Hobhouse Committee to base their conclusions on mature foundations.

The dense population and industrial character of urban England creates a special demand for National Parks and the mental and physical refreshment which may be obtained from the calm and serene beauty of unspoilt country. The heavy incidence of industrial and/or occupational psychopathic disease clearly points this out. The Hobhouse Committee adopted the definition of a " National Park " contained in the previous Dower Report :

" An extensive area of beautiful and relatively wild country in which for the nation's benefit and by appropriate national decision and action : (*a*) The characteristic landscape beauty is strictly preserved ; (*b*) Access and facilities for public open air enjoyment are amply provided ; (*c*) Wild life and buildings and places of architectural and historic interest are suitably protected while (*d*) established farming use is effectively maintained.

The Committee, therefore, recommended that twelve areas comprising a total of 5,682 square miles should be National Parks. These were the Lake District, North Wales, the Peak District, Dartmoor, the Yorkshire Dales, the Pembrokeshire Coast, Exmoor, the South Downs, the Roman Wall, the North York Moors, the Brecon Beacons and Black Mountains and the Broads.

Section 1 of the Act, therefore, establishes a National Parks Commission charged with functions for the purpose of preserving and enhancing natural beauty in England and Wales (particularly in the areas designated under the Act as " National Parks " (under ss. 5 (3) and 7) or as " areas of outstanding natural beauty " (under s. 87). The Commission is also under the duty of encouraging the provision of facilities for those who use National Parks including open air recreation (which by definition excludes organized games) and nature-study.

Besides their recommendations as to " National Parks " the Committee made recommendations that fifty-two areas of great natural beauty and of considerable scientific and recreational value should be designated as " Conservation Areas." Section 87 of the Act enables the Commission to protect such areas by designating them as " areas of outstanding natural beauty." These areas include (*inter alia*) the North Pennines (653 square miles), Plynlimon (520 square miles), the Cornish Coast (269 square miles), the Cotswolds (660 square miles) and Buckland (313 square miles).

After elaborating the constitution of the Commission in s. 2 the Act proceeds in s. 6 to set out its general duties in connexion with areas designated as National Parks under s. 5 (3), *supra*.

Besides protecting natural beauty and its enjoyment by the public the Commission's duties extend to a number of other matters, for example, giving advice to the planning authority for the area concerned about the administration of a National Park and if they think that special problems arise requiring particular professional or technical skill (*e.g.*, botanical, architectural or archaeological) to cope with them to notify their opinion to the authority and if requested place the expert services of their officers at its disposal (s. 6 (2) (*a*) (*b*)).

Other consultative or advisory powers given to the National Parks Commission relate to the provision of accommodation, access for open air recreation, byelaws and development pro-

posals. They possess powers to make recommendations to the Ministry of Local Government and Planning against development proposals inconsistent with keeping the area concerned as a National Park. If the Commission are not satisfied that the local planning authority are giving effect to their advice they may refer the matter to the Minister and advise him as to the exercise of his powers of discretion or enforcement under the Act or under the Town and Country Planning Act, 1947 (s. 6 (4) (1)).

Section 7 of the Act provides that the Commission shall consult with all local authorities concerned before making a designation order and sch. 1 sets out local inquiry and other machinery for protection of persons objecting to such orders which must be complied with before the Minister can confirm the order. Conversely in preparing a development plan the local planning authority must consult with the Commission and take into account its views (s. 9). By s. 8 not later than three months after a designation order comes into force, a local planning authority concerned must consult with the Commission about the various arrangements to be made in connexion with the Park under that section. Subsections (2) and (3) of the same section provide for joint planning boards if the park is in the area of more than one local authority and for separate planning committees or sub-committees where a National Park lies wholly within the area of one. The local planning authority are responsible to the Commission for the executive action required to preserve natural beauty spots and promoting the public's enjoyment of those areas designated as National Parks. They must formulate such protective proposals not later than twelve months after the designation order (s. 10 (2) (*a*)) and notify them to the Commission. It is moreover their duty to give effect to proposals so notified by exercising their general planning powers under the Act of 1947 so far as seems practicable.

Other interesting auxiliary powers with which the Act has equipped the local planning authority are set out in ss. 12 and 13. Under s. 12 such an authority with a National Park in their area may arrange for the provision of accommodation, meals and refreshments (including intoxicating liquor) together with camping sites and parking places with the requisite means of access. This section enters the proviso that the local planning authority shall not provide for such matters except where it appears to them that the existing facilities are inadequate either generally or specifically. It is material to note that such functions may not only be exercised in the actual park area itself but also in its neighbourhood (s. 12 (2)). The local planning authority cannot carry out these functions on private land without the landowners consent (s. 12 (3)) but are empowered to acquire land compulsorily for these purposes ((*ibid*) subs. (4)). It may here be remarked that provision is made by s. 92 of the Act enabling the local planning authority to appoint wardens for the enforcement of byelaws and other duties in connexion with the protection and maintenance of a National Park.

Another novel power is that given to the local planning authority by s. 13 to improve waterways for the purposes of open air recreation (including sailing, boating, bathing and fishing). A similar proviso restraining them from doing this if there are already adequate facilities is inserted in the section and there is also power to acquire land compulsorily for its purposes.

Finally, s. 14 of the Act invests the Minister of Local Government and Planning with residuary power to acquire land by agreement and with Treasury consent for the purposes of a National Park. The same section enables the Minister to transfer such land to trustees with a view to securing its proper management as such a park. Presumably this power would only be used in exceptional circumstances where there is a failure on the part of the other authorities or for some other special reason.

(*To be continued*)

INDEX TO HIGHWAY LAW

By A. S. WISDOM

Until such time as an Act designed to consolidate and amend the law relating to highways is placed upon the statute book, anyone seeking a point on highway law may be obliged to consult a multitude of statutes. Most of these statutes fall into well-defined groups :

(1) The Highway Acts, 1835-1885, dealing with highways as they existed in the nineteenth century.

(2) The Public Health Acts, 1875-1932, concerned with streets in urban areas, and incorporating appropriate portions of the Towns Improvement Clauses Act, 1847, and the Town Police Clauses Act, 1847.

(3) The Road Traffic Acts, 1930-1937, designed to cope with the modern motor vehicle and its traffic problems.

(4) Various Acts not readily identifiable with the other groups, *viz* : Development and Road Improvement Funds Act, 1909 ; Roads Improvement Act, 1925 ; Bridges Act, 1929 ; Restriction of Ribbon Development Act, 1935 ; Trunk Roads Acts, 1936 and 1946 ; and Special Roads Act, 1949. Other Acts, and some Defence Regulations, may be grouped under this heading.

The following index has been prepared with a view to facilitating the consideration of many points of highway law. The subdivision of subject matter is tentative and should be treated with some reserve. The index is confined to highway law of statutory origin and some matters, such as the dedication of highways, which are more particularly dealt with at common law are, of necessity, briefly considered. Highway law affecting the Metropolis is not included.

I—HIGHWAY AUTHORITIES

Subject-matter	*Statute*
Powers of Surveyors of highways and vestries under Highways Act, 1835, as amended, vested in urban authorities.	Public Health Act, 1875, s. 144
Highways repairable by inhabitants at large vested in urban authorities.	Public Health Act, 1875, s. 149.
Main roads vested in councils of counties and county boroughs.	Local Government Act, 1888, ss. 11, 34.
County councils made responsible for all county roads, including former main roads, in urban districts (except claimed roads) and for all highways in rural districts.	Local Government Act, 1929, Part III
Principal through routes become trunk roads vested in Minister of Transport.	Trunk Roads Acts, 1936 and 1946.

II—DEDICATION OF HIGHWAYS

Subject-matter	*Statute*
Highway not deemed to be public highway until dedicated in prescribed manner.	Highway Act, 1835, s. 23.

III—HIGHWAY CONSTRUCTION AND IMPROVEMENTS

Subject-matter	*Statute*
Land for making new road or widening or improving existing road.	Highway Act, 1864, ss. 47, 48. Public Health Act, 1875, s. 160. Towns Improvement Clauses Act, 1847, s. 67. Public Health Act, 1875, s. 154. Public Health Act, 1925, s. 83. Development and Road Improvement Funds Act, 1909, ss. 8, 10, 11. Roads Improvement Act, 1925, ss. 2, 3. Public Health Act, 1925, s. 33 (8). Restriction of Ribbon Development Act, 1935, ss. 13, 14. Housing Act, 1936, s. 79. Trunk Roads Act, 1936, s. 4 (6). Trunk Roads Act, 1946, s. 5. Town and Country Planning Act, 1947, s. 47. Special Roads Act, 1949.
Widening narrow highway.	Highway Act, 1835, s. 82.
Agreements as to making new public roads.	Public Health Act, 1875, s. 146.
Houses may be set forward for improving line of street.	Public Health Act, 1875, s. 160. Towns Improvement Clauses Act, 1847, s. 66.
Houses projecting beyond line of street to be set back when taken down.	Public Health Act, 1875, s. 160. Towns Improvement Clauses Act, 1847, s. 68.
Buildings in streets not to be brought forward beyond buildings on either side.	Public Health (Buildings in Streets) Act, 1888.
Rounding off buildings at street corners.	Public Health Acts Amendment Act, 1907, s. 22.
Building lines.	Roads Improvement Act, 1925, ss. 2, 5.
Improvement lines.	Public Health Act, 1925, ss. 33, 34.

IV—STOPPING UP AND DIVERSION OF HIGHWAYS

Subject-matter	*Statute*
Extinguishment of public rights of way.	Housing Act, 1936, s. 46. Acquisition of Land (Authorization Procedure) Act, 1946, s. 3. Town and Country Planning Act, 1944, s. 23, as amended by s. 44 and sch. VIII to the Act of 1947.
Stopping up and diversion of highways.	Highway Act, 1835, ss. 25, 84-92. Trunk Roads Act, 1946, s. 4 (1) (*c*). Town and Country Planning Act, 1947, s. 49. National Parks and Access to the Countryside Act, 1949, ss. 42-46. Special Roads Act, 1949, s. 3, sch. I, Part II.

V—PRIVATE STREET WORKS

Subject-matter	*Statute*
Making up private streets.	Public Health Act, 1875, ss. 150-152. Public Health Acts Amendment Act, 1890, ss. 11 (2), 41. Public Health Act, 1925, ss. 35, 81, 82. or Private Street Works Act, 1892. Public Health Act, 1925, s. 35. Town and Country Planning Act, 1947, s. 48.

VI—STREET REPAIRS AND SAFETY

Subject-matter	*Statute*
Obtaining materials for road repairs.	Highway Act, 1835, ss. 51-55.
Agreements as to repair of roads.	Public Health Act, 1875, s. 148.
Streets repairable by inhabitants at large to be maintained and kept in repair and may be raised, lowered or altered.	Public Health Act, 1875, s. 149.
Precautions during repairs.	Public Health Act, 1875, s. 160. Towns Improvement Clauses Act, 1847, ss. 79-83.
Precautions during progress of buildings, etc.	Public Health Acts Amendment Act, 1890, s. 34.
Repair of cellars under streets and cellarheads, cellar-doors, gratings, lights, coalholes.	Public Health Act, 1875, ss. 26, 160. Towns Improvement Clauses Act, 1847, s. 73. Public Health Acts Amendment Act, 1890, s. 35.
Urgent repairs to private streets.	Public Health Acts Amendment Act, 1907, s. 19.
Damage to footways by excavations.	Public Health Acts Amendment Act, 1907, s. 20.
Removal of old materials in street.	Public Health Acts Amendment Act, 1907, s. 28.
Deposit of building materials or excavations.	Public Health Acts Amendment Act, 1907, s. 29.
Dangerous places adjoining streets to be taken down, repaired or enclosed.	Public Health Act, 1875, s. 160. Towns Improvement Clauses Act, 1847, ss. 75-78. Public Health Acts Amendment Act, 1907, s. 30.
Certain lands adjoining streets to be fenced.	Public Health Acts Amendment Act, 1907, s. 31.
Hoardings to be securely erected.	Public Health Acts Amendment Act, 1907, s. 32.
List of repairable streets to be kept.	Public Health Act, 1925, s. 84.
Reinstatement of streets.	Public Utilities Street Works Act, 1950.

VII—NEW STREETS

Subject-matter	*Statute*
Byelaws as to new streets.	Public Health Act, 1875, s. 157. Housing Act, 1936, s. 140.

Subject-matter	*Statute*
Deposited plan of new street not effective where work not commenced within three years.	Public Health Acts Amendment Act, 1907, s. 15.
Retention of deposited plans.	Public Health Acts Amendment Act, 1907, s. 16.
Where plans of new street deposited local authority may vary intended position, direction, termination or level of street.	Public Health Acts Amendment Act, 1907, s. 17.
Erection of bridge forming part of new street.	Public Health Act, 1925, s. 28.
Continuation of existing street may be deemed to be new street.	Public Health Act, 1925, s. 29.
Declaration of street as new street for purposes of byelaws.	Public Health Act, 1925, s. 30.
Width of new streets in certain cases.	Public Health Act, 1925, s. 31.
Width of street where buildings erected on one side only.	Public Health Act, 1925, s. 32.

VIII—HIGHWAY SANITATION

Subject-matter	*Statute*
Prevention of water flowing on footpath.	Public Health Act, 1875, s. 160. Towns Improvement Clauses Act, 1847, s. 74. Public Health Act, 1925, s. 21.
Soil washed into streets.	Public Health Act, 1925, s. 22.
Removal of house and trade refuse.	Public Health Act, 1936, ss. 72-74.
Dustbins.	Public Health Act, 1936, s. 75.
Refuse disposal.	Public Health Act, 1936, s. 76.
Cleansing and watering of streets.	Public Health Act, 1936, ss. 77, 78. Trunk Roads Act, 1936, s. 6 (6).
Removal of offensive matter or liquid through streets.	Public Health Act, 1936, s. 82.
Public conveniences in streets.	Public Health Act, 1936, ss. 87-89. Trunk Roads Act, 1936, s. 6 (7).

IX—HIGHWAY ENCROACHMENTS AND OBSTRUCTIONS

Subject-matter	*Statute*
Snow impeding or obstructing highway.	Highway Act, 1835, s. 26.
Hedges, Trees, Shrubs, Walls, Fences — Overhanging or obstructing highway or view at corner.	Highway Act, 1835, ss. 65, 66. Highway Act Amendment Act, 1885, s. 2. Public Health Act, 1925, s. 23. Roads Improvement Act, 1925, s. 4.
Building, Hedge, Ditch, Fence — Encroaching on highway within fifteen feet from centre thereof.	Highway Act, 1835, s. 69. Highway Act, 1864, s. 51.
Pits, Shafts, Steam engines, Windmills, Burning ironstone, Quarries — Within specified distance of highway must be fenced.	Highway Act, 1835, s. 70. Quarry (Fencing) Act, 1887, s. 13.
Removal of matters laid on or near highway.	Highway Act, 1835, ss. 72, 73.
Projections against or in front of houses or buildings and over footways.	Public Health Act, 1875, ss. 160, 171. Towns Improvement Clauses Act, 1847, ss. 69, 70. Town Police Clauses Act, 1847, s. 28. Public Health Act, 1925, s. 24.
Doors and gates opening upon highway not to open outwards.	Public Health Act, 1875, s. 160. Towns Improvement Clauses Act, 1847, ss. 71, 72. Highways and Locomotives (Amendment) Act, 1878, s. 26 (4).
Ropes, Poles, Telegraph wires, Rails, Beams, Cables, Wires — Across highways.	Public Health Act, 1875, s. 171. Town Police Clauses Act, 1847, s. 28. Public Health Acts Amendment Act, 1890, ss. 13-15. Public Health Act, 1925, ss. 25, 26. Road Traffic Act, 1930, s. 51.
Barbed wire adjoining highway.	Barbed Wire Act, 1893.
Bridges over streets.	Public Health Act, 1925, s. 27.
Removal of structures from highways.	Road Traffic Act, 1930, s. 56.

X—TRAFFIC REGULATION

Subject-matter	*Statute*
Cattle straying on highway.	Highway Act, 1864, s. 25. Public Health Act, 1875, s. 171. Town Police Clauses Act, 1847, ss. 24, 27.
Riding, driving, etc., not permitted on footpaths, footways, bridleways, etc.	Highway Act, 1835, s. 72. Road Traffic Act, 1930, s. 14.
Prevention of obstructions by traffic.	Public Health Act, 1875, s. 171.
Control of street trading. Regulation of traffic during church service.	Town Police Clauses Act, 1847, ss. 21-23.
Regulation of Hackney carriages.	Public Health Act, 1875, s. 171. Town Police Clauses Act, 1847, ss. 37-68. Town Police Clauses Act, 1889. Public Health Act, 1925, s. 76.
Leading or driving animals.	Public Health Acts Amendment Act, 1907, s. 80.
Byelaws as to promenades.	Public Health Acts Amendment Act, 1907, s. 83.
Persons waiting to enter public vehicles.	Public Health Act, 1925, s. 75. Regulation of Traffic (Formation of Queues) (No. 2) Order, 1942 (S.R. & O., 1942, No. 1691).

Subject-matter	*Statute*
Carriages heavier than regulation weight may be permitted on specified roads.	Road Traffic Act, 1930, s. 24.
Prohibition or restriction of use of vehicles on specified roads.	Road Traffic Act, 1930, s. 46. Road and Rail Traffic Act, 1933, s. 29, and regulations made thereunder.
Temporary prohibition or restriction of use of vehicles on roads.	Road Traffic Act, 1930, s. 47.
Prohibition or restriction of use of vehicles on certain bridges.	Road and Rail Traffic Act, 1933, s. 30. *Note*—This provision is not yet operative.
Extraordinary traffic.	Road Traffic Act, 1930, s. 54.

XI—HIGHWAY FUNCTIONS, ANCILLARIES AND APPURTENANCES

Subject-matter	*Statute*
Barriers and posts for controlling queues at bus, etc., stops.	Public Health Act, 1925, s. 75. Defence (General) Regulation 54B.
Bridges.	Public Health Act, 1875, s. 147. Development and Road Improvement Funds Act, 1909, s. 8 (5). Bridges Act, 1929. Trunk Roads Act, 1936, s. 6 (3).
Bus stands.	Road Traffic Act, 1930, s. 90. London Passenger Transport Act, 1933, s. 52. *Note*—Local Authorities have no express general statutory power to provide bus shelters.
Cabmen's shelters.	Public Health Acts Amendment Act, 1890, s. 40.
Cattle crossings. Access across footways.	Public Health Acts Amendment Act, 1907, s. 18.
Cattle-grids.	Highways (Provision of Cattle-Grids) Act, 1950.
Control of advertisements along highways.	Town and Country Planning Act, 1947, s. 31, and regulations made thereunder.
Ditches.	Highway Act, 1835, ss. 67, 68.
Fences.	Highway Act, 1835, ss. 24, 55, 70, 72. Highway Rate Assessment and Expenditure Act, 1882, s. 6. Public Health Act, 1875, s. 149. Public Health Acts Amendment Act, 1907, ss. 30, 31. Restriction of Ribbon Development Act, 1935, s. 4.
Cycle tracks.	Trunk Roads Act, 1946, s. 3.
Footpaths.	Highway Act, 1835, s. 80. Roads Act, 1920, s. 4, sch. I. Road Traffic Act, 1930, s. 58.
Grass and other margins.	Roads Improvements Act, 1925, ss. 1, 2. Road Traffic Act, 1930, s. 58.
Highway amenities.	Restriction of Ribbon Development Act, 1935, s. 13.
Highway depot.	Highway Act, 1835, s. 19.
Mile-stones.	Highway Act, 1835, s. 24. Highway Rate Assessment and Expenditure Act, 1882, s. 6. Roads Improvement Act, 1925, s. 2.
Notices. Boundary posts. Direction signs. Traffic signs.	Highway Act, 1835, s. 24. Roads Improvement Act, 1925, s. 2. Road Traffic Act, 1930, s. 48. Road Traffic Act, 1934, ss. 1 (8), 36, 40, sch. III, and regulations made thereunder.
One-way roads.	Road Traffic Act, 1930, s. 46. Trunk Roads Act, 1946, s. 3.
Parking places, bus, etc., stations.	Public Health Act, 1925, s. 68. Road Traffic Act, 1930, s. 90. Road Traffic Act, 1934, s. 29. Restriction of Ribbon Development Act, 1935, s. 16.
Pedestrian crossings.	Road Traffic Act, 1934, s. 18, and regulations made thereunder.
Pillars. Guard rails.	Public Health Act, 1875, s. 149. Public Health Acts Amendment Act, 1890, s. 39.
Public walks. Public rights of way.	Public Health Act, 1875, s. 164. Local Government Act, 1894, s. 8 (1) (*b*), (*g*). Rights of Way Act, 1932. National Parks and Access to the Countryside Act, 1949, Part IV.
Refuges.	Public Health Acts Amendment Act, 1890, s. 39. Road Traffic Act, 1930, s. 55.
Road-ferries.	Ferries (Acquisition by Local Authorities) Act, 1919. Roads Act, 1920, s. 4, sch. I.
Seats. Public drinking fountains. Horse troughs.	Public Health Act, 1925, s. 14.
Statues. Monuments.	Public Health Acts Amendment Act, 1890, s. 42.
Service stations.	Special Roads Act, 1949, s. 10 (1) (*c*).
Special roads.	Special Roads Act, 1949.
Street bins.	Public Health Act, 1925, s. 13. Public Health Act, 1936, s. 76 (1) (*a*).
Street lighting.	Public Health Act, 1875, ss. 161, 163. Local Government Act, 1894, ss. 7, 11 (11). Lighting and Watching Act, 1833. Road Traffic Act, 1934, s. 23. Trunk Roads Act, 1936, s. 6 (4).

Subject-matter	*Statute*
Street naming.	Public Health Act, 1875, s. 160. Towns Improvement Clauses Act, 1847, ss. 64, 65. Public Health Acts Amendment Act, 1907, s. 21. or Public Health Act, 1925, ss. 17-19.
Street numbering.	Public Health Act, 1875, s. 160. Towns Improvement Clauses Act, 1847, ss. 64, 65.
Sub-ways.	Development and Road Improvement Funds Act, 1909, s. 8 (5). Road Traffic Act, 1930, ss. 55, 57
Tolls.	Highways and Bridges Act, 1891, s. 3. Roads Improvement Act, 1925, s. 2. Road Traffic Act, 1930, s. 53.
Trees. Tree-guards and fences. Shrubs.	Highway Act, 1835, s. 64. Public Health Acts Amendment Act, 1890, s. 43. Roads Improvement Act, 1925, ss. 1, 2.
Viaducts.	Development and Road Improvement Funds Act, 1909, s. 8 (5).
Weighbridges.	Road Traffic Act, 1930, s. 27 (4).

REVIEWS

Lieck and Morrison on Domestic Proceedings. Supplement by A. C. L. Morrison. London : Butterworth & Co. (Publishers) Ltd. Price 9s. 6d.

The main work was published, and greatly welcomed, only in 1949, and already a sixty-five page supplement has become necessary. The passing of the Married Women (Maintenance) Act, 1949, and the Maintenance Orders Act, 1950, to name only two of the recent statutes that affect this branch of summary jurisdiction, make the main work out of date without the supplement, and the latter will be required, therefore, by all who have to deal with this very difficult subject. The author has taken the opportunity of including references to numerous fresh cases and he expresses the hope, which certainly appears to be justified, that the supplement brings the law on the matter up to date as on January 1, 1951.

Part I of the supplement consists of a noter-up for the main work. There is one inevitable inconvenience with this in that references must be made to certain lines on the pages of the book, and as these pages do not show the numbers of the lines one has the somewhat laborious task of counting down each time to find the appropriate line. Part II sets out the relevant statutes or parts of statutes and statutory instruments with which the supplement is concerned. There is no index, but there is a table of cases and a table of statutes to facilitate reference. With the supplement the price of the main work is now 27*s.* 6*d.*, with postage 1*s.* extra.

The Reform of the Law. Edited by Professor Glanville Williams. London : Victor Gollancz Ltd. Price 18s.

Most English people take pride in the excellence of the administration of justice in this country, but of those who have more than a superficial knowledge of the subject few would deny that there is room for many reforms in the law itself, and that many reforms are overdue.

In this book, Professor Glanville Williams and a number of distinguished colleagues, have collaborated, and the result is a truly fine achievement. Although the book is by no means long, it covers a great number of branches of the law and makes many important recommendations. Happily, the authors are not content with barren criticisms, but prefer to offer practical remedies for all the defects to which they call attention.

There are undoubted advantages in our system of binding precedence, but there are certainly some disadvantages. Here it is claimed that the system is neither certain nor flexible and that scientific codification of the law would provide a better system. Modern draftsmanship of statute law is criticized and compared unfavourably with the old method under which the judges were given instructions and asked to draft the statutes.

There can be no doubt that the strictness of our rules of evidence is due to an intense desire to exclude what is unreliable or merely prejudicial but even here there may be room for improvement. As an example, the writers take the English hearsay rule, which has much to commend it, and argue that the probative value of hearsay evidence given immediately after an event may be greater than direct evidence given long after, when memory may have become untrustworthy. It has been recommended before, by at least one learned writer, that in civil cases at all events the judge should be entrusted with discretion to admit or exclude hearsay and other evidence which is at present excluded.

Turning to the subject of wills, the comment is made that anyone who has looked at *Jarman on Wills* knows the extraordinary jumble into which this branch of the law has fallen, and examples are given to show how badly the law can work and how easily the intentions of the testator may be defeated. Probably most of us can recall instances in which wills or other documents relating to the disposition of property have failed to accomplish their object owing to the difficulties and complications of the law.

Naturally the law of husband and wife and of affiliation is felt to be in need of reform, and the authors indicate clearly enough what they would do about it.

We are certainly impressed by the suggestion that the method of recovery of maintenance arrears, under an order of a magistrates' court, needs strengthening. To quote the authors : " By way of enforcement of payment of arrears the court should be empowered to order a proportion of a man's wages to be paid by his employer to the court." It is claimed that this would benefit all the parties. As to affiliation and bastardy we agree wholeheartedly that the piecemeal and out-of-date legislation should be thoroughly overhauled and replaced by a single statute in keeping with modern ideas. The impression is given that at present most affiliation orders come to an end when the child reaches the age of thirteen. We can hardly believe this is the position, but perhaps the authors do not intend to do more than call attention to the practice of some benches in this respect.

There are some interesting reflections on the criminal law. Like most reformers, these writers fasten upon the obsolete distinction between felony and misdemeanour and show how they would deal with it. They also call attention to changing attitudes towards specific crimes, instancing such offences as blasphemy and poaching, and the heavy penalties provided for horse stealing at a time when the horse was far more important and valuable as a working animal than he is today. There are suggestions for a new classification of crimes, based on three separate principles, which might go a long way to remove present anomalies.

Suggestions as to the methods of dealing with child offenders, more on the lines adopted in some other countries, will certainly find favour in some quarters but will be strenuously opposed in others.

As to insanity in relation to crime, as might be expected, there is plenty of criticism of the present law. This question arises in its most acute form upon a charge of murder, and here again the authors want the law reformed, particularly in relation to what may be called constructive murder.

The vexed question of police detention for questioning is, in our opinion, treated realistically. The view is expressed that it is illegal and objectionable, but the police need help in this matter, and the suggestion is made that the police should be enabled, by summary process, to bring a possible informant before a magistrate for questioning this with proper safeguards as to self-incrimination.

This may well prove to be the most important contribution to the cause of law reform that has been made in recent years. It is written for laymen to understand, and not only for lawyers. It is clear and concise, and always moderate in tone. Both the preface and the postscript reveal the sincerity and reasonableness of the authors, who make no extravagant claims, regarding their work as only a beginning and not an end. They do not expect everyone to agree with them, but they hope their proposals will be discussed and perhaps lead to better solutions of the problems than those they put forward.

To them, the most important matter is to establish a Ministry of Justice, if not in name, at least in effect, by an enlargement of the functions and the staff of the Lord Chancellor. At present, they

assert, reform of the law is nobody's business, although law is never static but constantly in need of change. A Ministry of Justice would keep a watch on the state of the law and suggest reforms.

We hope this notable book will be widely read and discussed.

A History of English Public Health 1834—1939. By W. M. Frazer. London : Bailliere, Tindall and Cox. Price 35s. net.

The publication of this book is very timely as it enables the student and practitioner of Public Health Administration to see the gradual development in the Public Health Services, which culminated in the comprehensive health and social security services under the legislation resulting from the Beveridge Report. It is sometimes forgotten that it was largely due to the foresight and intelligence of Edwin Chadwick, through his association with the Poor Law Commission of 1834, and afterwards as Secretary of the new Poor Law Department, that many of the early developments in public health were due. As the author reminds us in his introduction, it was one of Chadwick's claims to fame, as an administrator, that he was the first to institute central control over local services by a system of inspectors.

After referring to early experiments in sanitary legislation and organization between 1848 and 1871, the author describes the rise and development of environmental hygiene up to 1900. It then became clear to those in official or voluntary circles, who possessed any responsibility for the maintenance of the public health that the steps taken during the preceding half century to clean up the environment of the urban areas of the country, while of great value, were not sufficient by themselves to secure an adequate standard of physical fitness amongst members of the working classes. There then followed a period of seven years of preparation and further developments for over twenty-two years until 1929. Great changes were brought about by the Local Government Act of that year, one of the most important being the union, under the Medical Officer of Health, of preventive and curative medicine.

It is impossible in a review to do full justice to this book, which we are sure is bound to rank with the works of the Webbs, and in effect may be considered as a sequel to their volumes, which provided such a wealth of information for the student and the historian.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 27

A SOLICITOR ERRS

The senior partner in a firm of solicitors appeared at Croydon Magistrates' Court on April 6, 1951, to answer two charges alleging that on dates in September and November, 1950, at a time when he had not in force a practising certificate, he had used a description implying that he was qualified to act as a solicitor, contrary to s. 46 of the Solicitors Act, 1932, as amended by s. 22 of the Solicitors Act, 1941.

For the prosecution, which was initiated by the Law Society, it was stated that the defendant had held a practising certificate as a solicitor for some years. The certificate was renewable each year at the Society's discretion and without it a solicitor was not entitled to practise.

In January, 1949, the Council of the Law Society asked defendant for an explanation of a certain matter but no reply was received. On March 29, 1949, defendant was informed that unless his explanation was received, the Council would exercise their discretion against him, and as no explanation from the defendant was received, the Council notified the defendant on April 29, 1949, that he must give six weeks' notice of intention to apply for a certificate for the following year but no application was in fact received.

On September 12, 1950, defendant wrote to the Law Society on his firm's notepaper which gave his name as senior partner. He applied for a practising certificate and stated that, owing to illness, he had been away from business for most of that year. The defendant enclosed a cheque for £25 because, he said, he thought he ought to be fined for not having dealt with the matter before.

The secretary of the Law Society returned the cheque and pointed out that an explanation of the matter raised in January, 1949, was still outstanding.

Defendant wrote again to the Law Society on November 20, 1950, admitting that he had helped in the business from time to time, and stressed his sickness and ill health.

A practising certificate for 1951 had been granted to the defendant.

For the defendant, who pleaded guilty, it was stated that he had gastric trouble due to overwork and had been ordered a long rest. He had taken a long rest, but had assisted in the business from time to time.

The court imposed a fine of £10 upon each charge and ordered defendant to pay £10 10s. costs.

COMMENT

Section 46 of the Act of 1942 provides that any person not having in force a practising certificate who wilfully pretends to be or takes or uses any name, title, addition or description implying that he is qualified to act as a solicitor shall be liable on summary conviction to a fine of £10.

Section 22 of the Act of 1941 amends the penalty to £50.

(The writer is much indebted to Mr. Oliver A. Milan, clerk to the Croydon Justices, for information in regard to this case.)

R.L.H.

No. 28.

PASTEURIZATION OF MILK

A defendant carrying on business both as a wholesale milk distributor and as a milk retailer in the City of Lancaster appeared at the local magistrates' court on February 8, 1951, to answer two informations alleging infringements of s. 3 of the Food and Drugs Act, 1938, and seven informations alleging contraventions of ss. 3 and 83 (3) of the Act. The first two informations arose out of two samples of milk purchased from the defendant in his capacity as a retailer, and the remainder in respect of samples of milk purchased from retailers supplied by defendant in his capacity as a wholesale distributor.

Each of the informations alleged that the food sold was not of the quality of the article, namely, pasteurized milk, demanded by the purchaser, such milk failing to satisfy the phosphatase test for pasteurized milk prescribed by Part II of sch. 3 to the Milk (Special Designation) (Pasteurised and Sterilised Milk) Regulations, 1949.

The sampling officers, when purchasing the owner's samples, made it clear to the vendors that the milk was purchased for examination and not for analysis and, for this reason, the third portion procedure was not used, but the sampling procedure under the regulations was strictly observed.

Seven of the nine samples were submitted to a pathological laboratory, the other two being submitted to a public analyst, but the certificates issued in each case all revealed that the milk failed to comply with the phosphatase test.

The facts of the case were not seriously in issue and the analysts' findings were not contested, but on behalf of the defendant it was submitted that the prosecution broke down in that the term " Pasteurized Milk " was a term of description and, therefore, having regard to *Anness* v. *Grivell* (1915) 79 J.P. 558, the informations were improperly laid when they spoke of the quality of the article sold, quality in that case having been held to mean commercial quality and not description. As against this, the Medical Officer of Health for the city, in his evidence, had said that if he asked for pasteurized milk he would expect to receive milk of a commercial quality free from all pathogenic organisms and not just merely milk with the designation " Pasteurized " tacked on to it.

The second submission on behalf of the defendant was that proceedings could not properly be brought under s. 3, in respect of what was in essence, no more than a breach of a condition imposed in a licence to sell pasteurized milk and that for such a breach a local authority must rely entirely on the remedies made available to them by the Special Designation Regulations, *e.g.*, suspension or revocation of the licence to sell pasteurized milk.

The bench ruled against both the submissions, found the cases proved, and fined the defendant £5 on each of the nine summonses and ordered him to pay £8 18*s.* 3*d.* costs.

COMMENT

It will be recalled that in *Anness* v. *Grivell*, *supra*, which was relied upon by the defence, Lord Reading, C.J., examined critically the true meaning of the word " quality " which, in the Food and Drugs Act, 1875, appeared in s. 6 in the same context as it appears in s. 3 of the Act of 1938. The learned Lord Chief Justice said : " As to the meaning of the word ' quality ' it is suggested that it is equivalent to ' description.' I do not think that that is right. I think it means ' commercial quality,' and does not mean the commercial description of the article."

It would seem clear that the magistrates reached a right conclusion upon the first submission for Part II of sch. 3 to the Milk (Special Designation) (Pasteurized and Sterilised Milk) Regulations, 1949, lays down in great detail the provisions for the phosphatase test for

pasteurized milk, and it is apparent that milk which passes such test must indeed be of a specific commercial quality and not merely, as was stated at the hearing, ordinary milk with the description "pasteurized" attached to it.

The provisions as to pasteurization appear in Part I of sch. 2. To be pasteurized, milk must either be retained at a temperature of not less than 145° F. and not more than 150° F. for at least thirty minutes and be immediately cooled to a temperature of not more than 50° F.; or retained at a temperature of not less than 161° F. for at least fifteen seconds and be immediately cooled to a temperature of not more than 50° F.; or retained at such temperature for such period as may be specified by the licensing authority with the approval of the Minister.

It will be recalled that s. 83 (3) of the Act of 1938 is the section which gives power to the authority concerned to institute proceedings against a third party where they are satisfied that an offence has been committed by some person against the provisions of the Act and that the offence is due to the act or default of the third party.

(The writer is indebted to Mr. R. M. Middleton, O.B.E., town clerk, Lancaster, for information in regard to this case.)

R.L.H.

PENALTIES

Croydon—April, 1951—loitering for the purpose of betting—fined £30. To pay £2 costs. Defendant, a sixty-seven year old night watchman, was found to be in possession of forty-seven betting slips and £7 in cash. Defendant had three previous convictions for similar offences.

Croydon—April, 1951—failing to renew car excise licence—fined £1. To pay £1 1s. costs. Defendant's licence was found to be twenty-seven days out of date. He had been offered the opportunity by the licensing authority of paying a mitigated penalty of £1 and had declined to accept the offer.

Oxted—April, 1951—dangerous driving—fined £50, driving licence suspended for five years. Defendant, the driver of a lorry, a married man with four children, crashed into a safety island killing a woman and injuring her friend. Defendant paid £25, of the fine in court and was given six months to pay the balance.

Swansea—April, 1951—in charge of a motor car whilst under the influence of drink—fined £50. To pay £7 costs, disqualified from driving for twelve months. Defendant, a fifty-seven year old estate manager, was involved in a head-on collision with a taxi.

Wallington—April, 1951—selling food unfit for consumption—fined £5. To pay £1 1s. costs. Defendant company, caterers, sold a cake in which was found a piece of steel wire about one inch long. The company had a clean record for forty-three years.

Old Bailey—April, 1951—(1) obtaining a cheque for £50 by means of a forged instrument, (2) attempting to obtain a sum of £71 from a firm of bookmakers (two defendants)—each sentenced to a term of fifteen months' imprisonment. First defendant, a postman aged fifty-one. Second defendant a fifty-three year old gardener. Fraud was perpetrated by postman introducing into the post a letter bearing a falsely timed date stamp. The postman, who had an excellent character and had been employed by the Post Office since 1937, lost his employment and all hope of a pension.

MISCELLANEOUS INFORMATION

INCORPORATED ASSOCIATION OF RATING AND VALUATION OFFICERS ANNUAL CONFERENCE

It is announced that the annual conference will be held at the Central Hall, Westminster, on October 5 and 6, 1951. Details of the speakers, addresses and papers will be published shortly.

CENTRAL LAND BOARD: DEVELOPMENT CHARGE ON "NEAR-RIPE" MINERALS

The Central Land Board announce that mineral undertakers should not for the present submit an application of Form D. 1 for assessment of development charge for the winning and working, after June 30, 1951, of minerals which they believe to be near-ripe.

Near-ripe minerals are, broadly, those in which a person engaged in mineral working on July 1, 1948, had an interest on that date, or was under binding contract to acquire an interest. No development charge is payable for any development of near-ripe minerals which takes place before June 30, 1951, and the draft regulations proposed under the Mineral Workings Bill, at present before Parliament, provide for charge incurred after that date to be set off against payments from the £300 million.

The Board propose to send a form (S. 14) to those mineral undertakers whose minerals appear to be near-ripe in accordance with the draft regulations. The form will detail the near-ripe minerals and will include the Board's consent to their development during the period from July 1, 1951, to the date of the Board's determination of their development value.

These forms will be issued not later than June 1, 1951, and a mineral undertaker who has not received form S. 14 by that date and who will be working minerals on and after July 1, 1951, should then apply for assessment of charge.

PRE-WAR GERMAN-OWNED U.K. PATENTS AND TRADE MARKS

The Trading with the Enemy (Custodian) (No. 3) Order, 1951, S.I. 1951 No. 780, vests in the Custodian of Enemy Property pre-war German-owned United Kingdom patents and certain German interests in pre-war patents. The order will not interrupt but will continue the implementation of the International Accord of 1946 on the Treatment of German-owned Patents (Cmd. 7359), under which inventions the subject of pre-war German-owned United Kingdom patents are in general made available to the public.

GERMAN-OWNED REGISTERED TRADE MARKS

The Trading with the Enemy (Custodian) (No. 2) Order, 1951, S.I. 1951 No. 779, vests in the Custodian of Enemy Property all pre-war German-owned trade marks registered in the United Kingdom Register of Trade Marks.

The vesting is without prejudice to the ultimate future of the marks and should not be read to mean that they will necessarily be expropriated.

AN ABORTIVE BILL

By courtesy of the town clerk of Barking, we have been provided with an extract from proceedings in committee of the House of Commons upon a Bill promoted by the British Transport Commission, for—amongst other purposes—the establishment of a marshalling yard in the borough. The Bill would have given the Commission power to acquire certain lands and to undertake various works in different parts of the country. Eleven petitions were lodged against the Bill, but when the hearing was opened on April 10, before the House of Commons committee (Mr. Mainwaring in the chair) only three petitioners appeared, the Barking council, a private owner, and the county borough council of Southend. Mr. Cope Morgan, K.C., who led for the Commission, invited the committee to take the Barking petition first and indicated that all the matters in issue arose directly out of the Commission's project for the electrification of their line to Southend. Barking objected to a proposal to construct, in their borough, a large marshalling yard for freight traffic. Mr. Cope Morgan continued: "We are not at the moment electrifying; there is a good deal of preliminary work to be done before that can be carried out, and we are concerned in this Bill in these matters in dispute with two foundation stones for that scheme. One is dealing with the marshalling of freight traffic which is obviously essential. That is a matter which concerns Barking. The other is the question of a stabling place for rolling stock in the Southend area."

Sir Malcolm Trustram Eve, Bt., G.B.E., K.C., who led for the Barking corporation, summarized Barking's objections in the following words: "There is no urgency, no layout plan, no estimate of cost, no starting date, no alternative seriously considered—the ideal only—and no consultation with anybody before deciding, and no knowledge of any land uses in the borough." He asked the committee to say that the preamble of the Bill had not been proved, adding: "I hope that this will not discourage the Commission from producing a scheme for one marshalling yard, which we want."

Mr. Mainwaring, the chairman, in announcing the committee's decision, said: "The case to which we have been listening arises out of a failure to agree on the part of two public interests. One of these interests is concerned purely with transport problems of a sort; the other authority has a wider, a more diverse, set of interests to consider, amongst them public open spaces and so on. From the evidence that has been submitted there seems to be a possibility that they might have come to agreement had there been adequate consultations beforehand. I want to say it happens quite frequently in these rooms between contestants of one sort and another—this failure to bring about effective discussions. The committee is unanimous in the view that the better plan in this case would be for them to re-establish consultative relations. We are bound to say that as far as the marshalling yard is concerned the preamble of the Bill must be regarded as not proven. But we do not decide on the merits of the scheme. Indeed, it may well happen that after further consultations an agreed basis might be arrived at even if the marshalling yards are exactly where they are

now. So the committee does not turn this down on merits, but it does suggest to the interested parties that they might talk this over and come to an agreed basis upon which they might re-enter this issue in these rooms again."

For our part, we do not know how it came about that the Bill was promoted in this way. The chairman's statement is reminiscent of occasions between the wars, when large local authorities started projects, in Parliament or elsewhere, without consulting smaller authorities who were affected. How much public money has gone, in legal costs and House fees, in this case can only be conjectured. The chairman's remarks should be taken to heart by all public authorities.

"THE SUPPLEMENTAL LIST"

One of the great "Unpaid" am I,
Often commonly known as a "Beak."
Many years have now gone by,
Youthful enthusiasm passed its peak,
Since I was commissioned a Magistrate:
And yet more tolerant grown, I wist,
Now that I'm on the "Supplemental List."

Many a time while looking stern,
My heart's been rung, my mind made sad,
As I've listened in sorrow and patient concern,
To cases distressing and woefully bad.
By all those poor, distressed and forlorn,
I musingly wonder, shall I be missed,
Now that I'm on the "Supplemental List."

Never again shall I be amused,
As with Paddy the drunk and cheerful old rogue,
And hear his extravagant reasons confused,
In beguiling and smiling rich Irish brogue:
And the blarney, the charm of the dear old scamp,
When we'd decide his case be dismissed,
Now that I'm on the "Supplemental List."

The assaults and drunks and petty offence,
And all the other charges heard,
The varied excuses put forth in defence,
Some serious, some light and some absurd:
And I sit by the fire and peacefully think,
All these must fade as in a mist,
Now that I'm on the "Supplemental List."

W. S. A. ROBINSON,
Glossop.

TONGUE-TYING

He asked the most personal questions
Of people he hardly knew—
Because that, of course, is what counsel
Is really expected to do.

He asked them impertinent questions
(Not so much as a blush on his face)
He tied them in knots with their answers
And diminished the strength of their case.

But then when it came to the lady,
Whose hand and whose heart he desired,
He never got round to the asking
Of the one little question required.

J.P.C.

CORRESPONDENCE

[The Editor of the *Justice of the Peace and Local Government Review* invites correspondence on any subject dealt with in its columns, for example, magisterial matters, probation, local government, etc.].

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

PUBLIC HEALTH ACT, 1936
DRAINAGE OF COUNCIL HOUSES

With great respect to the person responsible for P.P. 8 at p. 286, is it correct that s. 15 of the Act is available in the circumstances mentioned? Section 15 gives power, after reasonable notice to those concerned, for the laying of public sewers. The proviso to s. 20 (2) makes it clear that a sewer draining council property only shall not be deemed to be a public sewer until so declared, an act which can presumably only take place after the sewer has come into existence. In advance, therefore, of the laying of such a sewer and the subsequent declaration of vesting surely it cannot be said that the sewer is a public one for the purpose of s. 15.

Yours faithfully,
G. T. GILES.

Pallant House,
Chichester,
Sussex.

[Our learned correspondent has fastened on one of the loose ends in the Act of 1936: *see* Notes of the Week, p. 320, *ante.—Ed., J.P. and L.G.R.*]

NEW COMMISSIONS

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Samuel Morgan, 8, Ship Street, Brecon.

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William Elder, Polwarth House, Berwick-on-Tweed.
Clement Pattison Martin, 4, Elton Terrace, Tweedmouth, Berwick-on-Tweed.
Henry Gourlay McCreath, 6, Castle Terrace, Berwick-on-Tweed.
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Henry Marwood Bulmer, Riccal House, Nunnington, York.
Lieutenant Colonel Joseph Henry Goodhart, M.C., Keldholme Priory, Kirkbymoorside, York.
Dame Cyrilla Smith Dodsworth, Thornton Watlass Hall, Ripon.
Lieutenant-Colonel Assheton Penn Curzon-Howe-Herrick, Clifton Castle, Ripon.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Children Act, 1948—*Resolution under s. 2—Mother dead—Previous divorce gave her custody—Notice to father.*

A husband and wife had two children. The wife obtained a decree of divorce and the decree provided that the children "do remain in the custody of the petitioner until further order of the court." The husband left the district and settled in another part of the country, where his mode of life is not considered to be all that it might be. The wife died and the children, having no home, were taken into care by the local authority under s. 1 of the Children Act, 1948. Having regard to the death of the mother and the unsuitability of the father's mode of life, the local authority wish to pass a resolution assuming parental rights under s. 2 of the Act. Section 6 (2) of the Act provides that where a custody order is in force, then the foregoing provisions of the Act shall have effect as if for references to the parents or guardians of the child or to a parent or guardian, there were substituted references to the person who has been granted the custody of the child.

In the above circumstances, the mother having died, is the order made by the Divorce Court giving custody of the children to the mother still "in force" for the purposes of s. 6 (2)? That is to say, is it sufficient for the local authority to pass a resolution assuming parental rights under s. 2 (*a*) only, or must they also pass a resolution in respect of the father under s. 2 (*b*) with the resultant duty to serve notice on the father under s. 2 (2)? S. CUSTODY.

Answer.

Unless the Divorce Court declared the father unfit to have custody, under s. 7 of the Guardianship of Infants Act, 1886, the father becomes the guardian of the children on the death of the mother: *see* Guardianship of Infants Act, 1925, s. 4. Therefore, we consider that notice should be served upon him. It can hardly be said that the order giving custody to the mother is still in force, and in any case it is always better to serve a notice in case of doubt.

2.—Contract—*Life assurance—Insurable interest.*

In 1934 policies of whole life assurance under the Industrial Assurance Act, 1923, were taken out by Mrs. A on the lives of her sisters Mrs. B and Mrs. C. On the death of Mrs. A in 1942 these policies were assigned to Miss D who was yet another sister of Mrs. A, Mrs. B, and Mrs. C. Miss D has now died during the lives of Mrs. B and Mrs. C.

The beneficiaries under the will of Miss D are Miss X and Miss Y. Miss X is a child of Mrs. B (one of the lives assured) and Miss Y is the child of yet another sister of Mrs. A, Mrs. B, and Mrs. C and, therefore, a niece of the two lives assured. It is now desired to assign the policies to Miss X and Miss Y but is there any insurable interest so far as Miss Y is concerned in either policy, and is there any insurable interest so far as Miss X is concerned in the policy on Mrs. C's life?

If not it is assumed that the only course open to the executors of Miss D is to transfer the benefit of the policies back to the respective lives assured. ARNET.

Answer.

This is outside our specialized fields; we think the executors might do well to consult the insurance company or friendly society, whichever it is. It seems that if the company (or society) is willing when the time comes to pay without questioning the insurable interest, it is free to do so.

As we understand the position, sisters and children do not, as a matter of course, possess an insurable interest in the lives of each other or the lives of their parents. It looks, therefore, as if the company (or society) would have been no more bound to pay to Mrs. A or Miss D, had Mrs. B or Mrs. C died while those ladies were alive, than they are now bound to pay Miss X and Miss Y, upon death of Mrs. B and Mrs. C.

On the other hand, daughters and nieces do in common experience receive financial help from mothers and aunts at least as often as do sisters, so that insurable interest might now be rather easier (if anything) to establish than it would have been if sought to be established by Mrs. A herself.

3.—Criminal law—*Evidence—Deposition of sick person—Use at summary trial of indictable offence.*

A is suspected of having stolen certain property found in his possession, and the only person who can identify the property is B, an aged person who is seriously ill and unable to attend court to give evidence, and who lives at a considerable distance from the place where the offence was committed, but in the same county. It is proposed that a justice for the division where B resides shall take a deposition from her under s. 6 of the Criminal Law Amendment Act, 1867, which deposition will then be sent to the clerk of the peace for the county. The value of the property stolen is small. If A is dealt with summarily, can the clerk of the peace be required to send the deposition to the clerk of the court where the case is being heard, and is there any authority for reading such deposition at the summary trial? TEEP.

Answer.

We have never heard of a case in which a deposition so taken has been used at a summary trial for an indictable offence, and we know of no authority on the point. In 1867 there were very few cases of indictable offences dealt with summarily, and doubtless s. 6, *supra*, was intended to refer to trials on indictment only. While it might be argued that the words of the section could admit of its application to the summary trial of an indictable offence, we doubt the soundness of such an argument, and we think that upon a summary trial the justices should act only upon the evidence given before them.

If A were charged with the offence, a possible alternative would be for two justices to take B's evidence in A's presence, as examining justices under the Indictable Offences Act. If subsequently the same two justices constituted a petty sessional court and A consented to be tried summarily by them, they could act upon all the evidence including B's. The difficulty about this might be that A demanded a recall of B in accordance with s. 27 of the Summary Jurisdiction Act, 1879, and apparently this would be impossible, so the case might have to be committed for trial after all.

4.—Licensing—*On-licence applicable to "restaurant" only—Conditions.*

I am informed that an application is going to be made to the licensing justices of this division for a "restaurant" or "hotel" licence in respect of premises at present registered as a club, which are also a residential hotel. I have not been able to find this matter set out in *Paterson* except at pp. 40 and 41 and under s. 45, Finance Act, 1910, at p. 423, and I should be obliged if you would kindly inform me:

1. If granted, what form should the licence take? It appears that it is a full on-licence conditional upon there being no public bar, no off-licence trade, and no drinks being served with meals except to persons dining during licensing hours. Is there a special form of licence and, if so, could you please indicate a precedent?

2. Should the usual notices and advertisements show that the licence is to be so limited, or should the application be for a full on-licence?

3. Can the licence, if so limited, be extended to the full on-licence by paying the additional monopoly value and excise duty without further application to the licensing justices, or subject only to their approval of structural alterations or plans showing a public bar?

4. Is there any objection to granting extensions of hours in the usual way for a restaurant or hotel licence, so that drinks can be served with meals on special occasions such as dances—say at 1 *a.m.*?

5. Is it within the powers of the licensing justices to grant a restaurant or hotel licence in respect of a premises in which there is already a club licence, or is the existence of the club and the restaurant licences together in the same building purely a matter for the police authorities? I have read Answer 40—*Questions and Answers* 1938–1949, p. 236, but if the licence is limited as above there may be some distinction.

6. Please indicate the authorities and precedents in *Paterson* or elsewhere covering restaurant and hotel licensing, and any additional information you are able to give me would be much appreciated. NAMIZ.

Answer.

1. There is no special form of licence. The appropriate licence is a full on-licence to which restrictive conditions attach.

2. The law does not require that notices shall specify the restrictive conditions, but it is usual to include them in order that possible opposers shall be as fully informed as the circumstances permit.

3. There must be application to the licensing justices. *See* Finance Act, 1947, s. 73.

4. There is no legal objection. The conditions restricting the sale, etc., of intoxicating liquor will, of course, attach during the "extended" permitted hours. The conditions must be carefully drafted to secure that they set out exactly what is intended.

5. There is no law on the subject. The matter is entirely within the discretion of the licensing justices. In this matter also, the conditions must be carefully drafted so as to avoid inconsistent facilities overlapping.

6. We know of neither authority nor precedent governing the particular unusual application. The licence will be applied for and granted as an ordinary on-licence and the forms, with appropriate adaptations, may be in accordance with those contained in the Appendix to *Paterson*.

We can only advise that the responsibility of drafting the conditions shall be placed on the applicant's legal advisers, leaving it to the licensing justices to accept them or modify them as in their discretion they think fit. The applicant is in the better position to foresee how it will be possible for him to conduct his business without danger of breaking the law.

5.—Licensing—*On-licence conditioned for service only with meals—Registered club also on premises—Form of notice of application.*

A client of ours, a private limited company, is the owner of a country house club and unlicensed hotel and wishes to make application to forthcoming Brewster Sessions for "a table licence," *i.e.*, a licence permitting the supply of intoxicants in conjunction with luncheon or dinner to members of the public visiting the hotel as non-residents but not otherwise. The premises in question also form the headquarters of a registered club. Our inquiry is directed to the nature of the notice of application to the licensing justices, etc. Should this notice be a notice of application for a full licence and the conditions limiting supply as above mentioned to the licensing justices on the application at Brewster Sessions, or should the notice itself contain particulars of the conditions which the licensing justices will be invited to impose upon the licence, if granted? We have been unable to derive any assistance on this matter from *Paterson* although we believe such applications are not uncommon, particularly at the seaside.

Your opinion would be greatly appreciated and a suggested form of notice would be of assistance. OPI.

Answer.

Notices must be given in accordance with s. 15 of the Licensing (Consolidation) Act, 1910, as for a full on-licence. It is not a requirement of the law that the notices shall specify the conditions which it is sought shall attach to the licence if granted: licensing justices are not fettered in their discretion to attach conditions by the presence or absence of anything on the subject contained in the notices. But it has become usual for such conditions to be set out in order that possible opposers may be as fully informed as the circumstances permit.

In the case outlined by our correspondent the position is complicated by the fact that a registered club has its address on the premises; but we suggest that there be used the ordinary form of application for an on-licence (No. 3 of the Forms and Precedents contained in the Appendix to *Paterson*) with a clause similar to the following inserted:

> And it is my intention to apply to the justices to insert in such justices' licence a condition that the sale, supply and consumption of intoxicating liquor shall be restricted to persons sitting at tables partaking of meals: provided that this condition shall not operate so as to restrict in any way the supply to its members by the .... Club, duly registered as having its address on the premises, or the consumption of intoxicating liquor by such members.

6.—Licensing—*Qualification of premises for a spirits on-licence—Power to grant where only one of several rooms is to be used—One other room separately licensed as off-licensed premises.*

A who at present holds a justices' licence to sell intoxicating liquors by retail for consumption off the premises from his grocer's shop on the ground floor, is making application for a justices' licence for consumption of any intoxicating liquor on the premises and is asking the justices to insert a condition that intoxicating liquors shall be served only with meals. He has a restaurant on the first floor and it is assumed that the application is intended to apply to the restaurant. The plans lodged with the application disclose the fact, however, that the restaurant premises on the first floor consists of *one public room only*. In view of the provisions of s. 37 of the Licensing Act, 1910, requiring two rooms for the accommodation of the public it seems doubtful whether the justices can grant a full licence for the restaurant.

If A submits that the shop on the ground floor is to form part of the licensed premises he will be ham-strung with his own condition restricting the sale of intoxicating liquor with meals only, as there cannot be a separate "on" and "off" licence in force in respect of the same premises. It would also appear that if the "on" licence is to extend to the shop portion of the premises A will have to pay a monopoly value on the "off" licence sales. Your opinion is therefore sought on the following points:

1. In view of the provisions of s. 37 can the justices grant a full licence in respect of this one roomed restaurant?

2. Apart from this obstacle it would appear that the justices have power to grant the licence in respect of the restaurant portion of the premises only: *see Commissioners of Customs and Excise* v. *Griffith* (1924) 88 J.P. 85.

3. Can the justices, however, grant such a licence restricted to the restaurant if A's application is not limited to that portion of the premises but is "sell for consumption on the premises situate at 12, Blank Street, Bychester"? NONESUCH.

Answer.

1. With some doubt, we think that a full on-licence may be granted in respect of the restaurant. The section mentions two other rooms for the accommodation of the public: it does not require that the licence shall permit the sale and consumption of intoxicating liquor in these rooms. *See* our answer to a P.P. at 110 J.P.N. 230.

2. Yes. It is the decision in *Commissioners of Customs and Excise* v. *Griffith*, *supra*, to which we must turn for the answer given above.

3. We are in no doubt that one full on-licence may be granted to cover the whole building: a licence to which conditions are attached under s. 14 (1) of the Licensing (Consolidation) Act, 1910, prescribing that no intoxicating liquor shall be sold except in the restaurant and the grocer's shop; and restricting the sale of intoxicating liquor in the restaurant to persons sitting at tables partaking of meals; and restricting licensed business in the grocer's shop to sales for off-consumption only. The monopoly value will then fall to be assessed by reference to these restrictive conditions.

7.—Magistrates—*Chairman of bench—Voting by ex officio justices.*

I shall be glad of your opinion on the following point. Under the Justices of the Peace (Size and Chairmanship of Bench) Rules, 1950, S.I. 1950 No. 1908, no indication is given as to whether *ex officio* justices have a vote in the election of chairman and deputy chairman of the bench. On the local bench the chairman of the urban district council and the chairman of the rural district council automatically become justices of the peace for their year of office. As they are elected annually in May, it is obvious that they cannot be elected chairman or deputy chairman. The question is, however, do they have a vote in the election? ANOL.

Answer.

The Rules do not exclude them from taking part in the election; during their council chairmanship they have the status, powers, and duties of justices and we see no ground for supposing that this function does not go with that status.

8.—Open Spaces Act, 1906—*Burial ground—Disused as to part only.*

The council are the burial authority in control of a cemetery established by the burial board last century and since transferred, together with the functions of the board, to the council. Part of the cemetery is

now no longer used for burials, as all the grave space in that part has been applied, and a question has arisen as to the powers available to the council to lay out this part of the cemetery as an open space for the enjoyment of the public with paths, lawns, and garden plots, and for this purpose to enclose it, probably by means of a low wall or fence, and thus separate it from the remainder of the cemetery which is still in use. In the disused part of the cemetery, which presents a very dilapidated appearance, are a number of tombstones and grave surrounds erected from time to time with the consent of the burial authority, and a number of these are over grave spaces in respect of which exclusive rights of burial, which have now been fully exercised, were granted under s. 33 of the Burial Act, 1852. The scheme proposed by the council would involve the removal of these tombstones and surrounds and their re-erection, if necessary, in another part of the cemetery. The ground in the disused part of the cemetery is not consecrated.

The provisions of the Cemeteries Clauses Act, 1847, do not apply and the Burial Acts, 1852-1906, which otherwise apply, give no guidance as to the manner in which a burial ground may be dealt with when it, or part of it, has become disused other than as a result of an Order in Council. This cemetery cannot be wholly or partially closed by an Order in Council because of the protection in s. 5 of the Burial Act, 1853. The proposals for the adaptation of the disused part would not infringe any provision of the Disused Burial Grounds Act, 1884.

It would appear from a consideration of the various authorities that although the council as owners of the soil and as the appropriate burial authority may deal with the surface of the cemetery in any manner which would not infringe the provisions of the Disused Burial Grounds Act, the removal of monuments and tombstones and the laying out of footpaths, possibly over the site of graves, can only be carried out under and in accordance with the provisions of the Open Spaces Act, 1906. The relevant sections in this case are ss. 10, 11 (3) to (5), and 12. The powers relating to the removal of headstones, however, apply only to a " disused burial ground," " burial ground " being defined as including any churchyard, cemetery or other ground, whether consecrated or not, which has been at any time set apart for the purpose of interment, and " disused burial ground " meaning any such burial ground which is no longer used for interment, whether or not the ground has been partially or wholly closed for burials under the provisions of a statute or Order in Council.

This cemetery as a whole is still used for interments and does not appear to be within the definition of a disused " burial ground " ; it would seem, therefore, that the powers of the Open Spaces Act cannot be exercised in relation to any part of it.

Your advice on the following points would be much appreciated :

(1) Whether the conclusion reached above is correct.

(2) If not, whether the expression " disused burial ground " can be read as including any part of a burial ground which is disused so as to apply the provisions of the 1906 Act.

(3) If the provisions of the 1906 Act cannot be applied, whether any other powers are available to the council to achieve the object desired before the cemetery as a whole is closed to further burials.

(4) Whether ownership of the soil of the cemetery confers on the council any general power to deal with it in the manner suggested above.

(5) Generally. A. JUNAS.

Answer.

1 and 2. We have examined all reported cases, and do not find that the question whether part of a ground can be cut off and treated as disused, while the remainder is still being used, has been dealt with judicially. We are therefore bound to advise that the course proposed is open to challenge, since apparently the ground came to the council as a unit and has been so administered. But the Act of 1906 gives detailed safeguards (note especially the older section excluded from repeal), and we doubt whether there is serious danger of challenge.

3. We know no other method.

4. In our opinion, only in accordance with the Acts : *London County Council* v. *Greenwich Corporation* (1929) 93 J.P. 123, and the earlier cases there reviewed.

5. We should risk it, but taking care that the utmost publicity is given to the proposal before money is spent, thus drawing the fire of any possible opponents and avoiding any suggestion of surreptitious dealing with a matter in which sentiment may be aroused.

9.—Private Street Works—*Voluntary work by council as evidence of liability.*

The Private Street Works Act, 1892, and s. 19 of the Public Health Acts Amendment Act, 1907, are in force in the borough. A member of the council has proposed that " without prejudice to the legal position " the council shall carry out work of levelling and re-surfacing a private street. In the event of the council's undertaking this work without charging the frontagers, do you consider this would affect the operating of the Private Street Works Act, 1892, should the council subsequently decide to make up the street under that Act ?

BARROW.

Answer.

We are bound to say we think it risky ; the levelling and resurfacing might be treated some years hence as evidence of liability. From a practical point of view, something depends upon whether the frontagers all, or nearly all, agree to the suggested course : *see* P.P. 2 at 113 J.P. 379 and P.P. 4, *ibid.* 734, as to cases where nobody wants the legal issue brought to a head.

10.—Public Health Act, 1936—*House with no means of sanitation—Suggested compulsory purchase of cesspool.*

A is the owner of a house drained, under a licence which has now been determined, to a cesspool constructed on adjoining land owned by B. It is not possible to drain the house on any other land adjoining the property, but B has emphatically refused to sell the site of the cesspool or to grant any extension of the licence. It appears that A is likely to find his property completely deprived of sanitation at any time, with no means of constructing a new system. The council has been requested to invoke statutory powers to remedy the position. Your opinion is sought as to whether the council can acquire compulsorily, with a view to sale to A, so much of B's land as is necessary for the proper drainage of A's property and, if so, on what authority.

ABBOT.

Answer.

No. The council's power of compulsorily acquiring land is for the purpose of their own functions.

11.—Small Dwellings Acquisition Acts—*House already purchased—Loan for paying off mortgage.*

Is it permissible for a local authority to make an advance under the above Acts to repay an existing mortgage in the case of a resident of the mortgaged property ? BEE.

Answer.

In our opinion, no, for reasons given in P.P. 3 at 113 J.P.N. 607, *i.e.*, the Acts make public money available for house purchase, not for putting into the pocket of those who have already become owners.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*)

BOROUGH OF CARLISLE

Town Clerk's Department

APPLICATIONS are invited for the appointment of a Committee and General Clerk in the Town Clerk's Department. Salary will be in accordance with A.P.T. Grade IV and the appointment will be subject to the National Scheme of Conditions of Service. Previous Municipal experience will be an advantage.

The successful applicant will be required to pass a medical examination.

Applications, stating age, qualifications and experience, accompanied by copies of two recent testimonials, and endorsed "Committee Clerk," to be received by the undersigned not later than June 6, 1951.

H. D. A. ROBERTSON,
Town Clerk.

15, Fisher Street,
Carlisle.

May 18, 1951.

METROPOLITAN BOROUGH OF PADDINGTON

Town Clerk's Office

Appointment of

(i) **Male Assistant Common Law Clerk (A.P.T. II) (£500—£545).**
(ii) **Male Clerical Assistant (Clerical Division) (£475—£520).**

APPLICATIONS are invited for the above appointments. The *starting salary* in each case will be fixed according to the qualifications and experience of the successful candidate. Each appointment is subject to the National Joint Council's Service Conditions; the Borough Council's Superannuation Acts, and to one month's notice on either side.

For appointment (i), candidates should have knowledge of Magistrates' Court and County Court work and have had appropriate experience with a local authority or in a solicitor's office.

For appointment (ii), candidates should be familiar with the preparatory work, under supervision, of compiling Committee Agenda Papers, Minutes and Reports and have had experience of local government administration in a Town Clerk's Office. Preference will be given to applicants who are competent shorthand-typists.

Candidates for each appointment must furnish information under the following headings: (*a*) age; (*b*) qualifications; (*c*) present and past appointments, with dates and salaries; (*d*) experience; and (*e*) give the names and addresses of three referees. Covering envelopes must be endorsed with the name of the post for which application is made and should reach me by 10 *a.m.* on June 4, 1951.

W. H. BENTLEY,
Town Clerk.

Town Hall,
Paddington, W.2.

BOROUGH OF STOCKTON-ON-TEES

Appointment of Assistant Solicitor

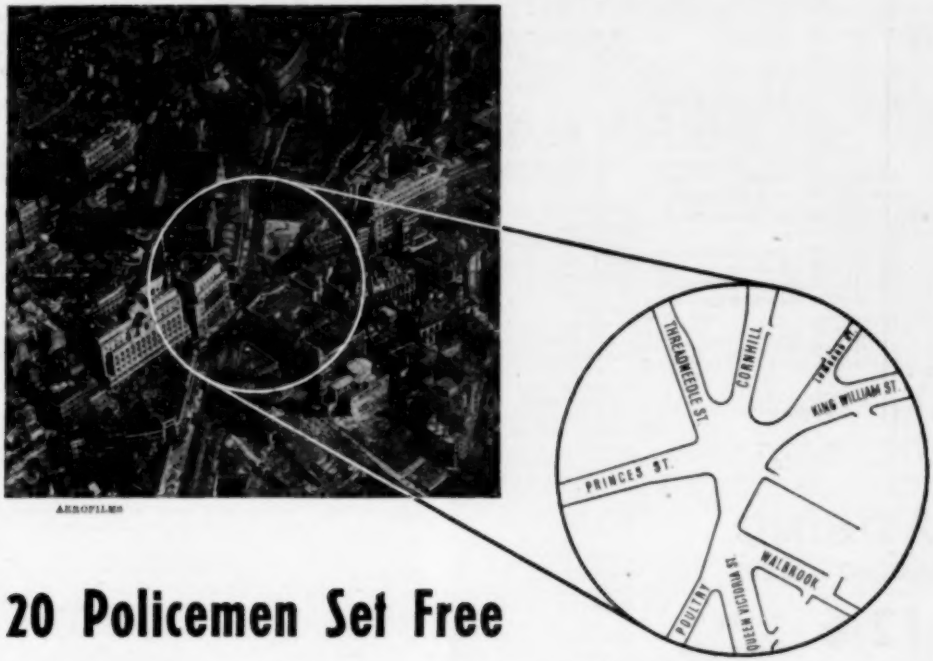
APPLICATIONS are invited for the position of Assistant Solicitor in my office. The salary will be within the range (Grades Va to VII £600—£760) provided by the National Joint Council according to qualifications and experience. The National Joint Council conditions will apply.

Preference will be given to applicants who have had previous service in a local government office and who have had experience in conveyancing and advocacy. Some administrative work will be involved in the appointment.

Applications, giving particulars of age, education, present and past appointments (with salaries and dates), and experience, together with the names of two referees, should be forwarded as soon as possible to the undersigned, endorsed "Assistant Solicitor."

FRANK HILL,
Town Clerk.

Barclays Bank Chambers,
49, High Street,
Stockton-on-Tees.
May 21, 1951.



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